

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the present amendments and following discussion, is respectfully requested.

Claims 1-42 are pending; Claims 31-38 are withdrawn from consideration; Claim 8 is amended; Claim 39-42 are newly added herewith; and no claims are canceled. It is respectfully submitted that no new matter is added by this amendment.

In the outstanding Office Action, Claims 1-30 were rejected under 35 U.S.C. § 103(a) as unpatentable over O'Riordain (U.S. Pat. No. 6,434,364) in view of Hansson (U.S. Pat. No. 6,023,620). For the reasons discussed below, this rejection is respectfully traversed.

As described in the specification, a number of problems occur when a qualification test is performed on a software defined radio terminal (e.g., a radio terminal including software for performing radio functions). For example, if additional software for a second radio communication system is installed on a software defined radio terminal after the terminal has passed a first qualification for a first communication system, the terminal may not be able to communicate within the second radio communication system. For example, the terminal may generate electromagnetic waves having a higher electric power than required by law and/or may cause power leakage to adjacent channels.¹

In light of these difficulties, the Applicants developed the present invention as recited, for example, in Claim 1. To this end, independent Claim 1 recites, in part,

A qualification method for testing a radio communication system including a plurality of radio terminals, comprising ...

receiving a test success message indicating that the representative terminal passed the qualification test; and

notifying the test success message to the plurality of radio terminals.

¹ Specification, page 3.

Claims 8, 17, and 24 recite analogous features. A non-limiting example of these features is illustrated in Figure 1(b) in the present specification.

As admitted in the outstanding Office Action, O'Riordain does not disclose or suggest the claimed notifying step. Additionally, Applicants note that O'Riordain does not disclose or suggest testing a representative terminal, as claimed.

The outstanding Office Action attempts to remedy the deficiencies of O'Riordain by relying on the teachings of Hansson. Hansson relates to a method for downloading control software to a cellular telephone. At page 4, the outstanding Office Action alleges:

Hansson teaches a method and system (See fig. 1) comprising an update server processor 100 (service center) for downloading new version (*sic*) of control software (the new version of control software, of course, inherently has passed some types of testing processes) into a plurality of radio terminals 110 via a base station 120 when the new control software is available.

First, as explained by MPEP § 2112, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993). Additionally, inherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999).

In this case, the outstanding Office Action has not provided any reasoning to support the allegation of inherency. Accordingly, it is respectfully submitted that the outstanding Office Action has not satisfied the requirements set forth in MPEP § 2112.

Moreover, it is respectfully noted that the outstanding Office Action has not addressed the claimed notifying step. Rather, the outstanding Office Action states “O’Riordain does not mention that the RNPM is capable of notifying the determined control sequence to the

plurality of radio terminals 12 via a service center and a base station.” Applicants respectfully note that these limitations are not recited in the independent claims.

As set forth above, Claim 1 recites, in part, “notifying the test success message to the plurality of radio terminals.” Claims 8, 17, and 24 recite analogous features. The outstanding Office Action does not address these particular claimed features, and Applicants respectfully submit that Hansson does not in any way disclose or suggest testing radio terminals. As a result, it is respectfully submitted that Hansson necessarily fails to disclose or suggest the claimed notifying step.

Therefore, as the applied combination of O’Riordain and Hansson does not disclose or suggest the features of Claims 1, 8, 17, and 24, it is respectfully submitted that the outstanding Office Action has not provided a *prima facie* case of obviousness, and it is respectfully requested that the outstanding rejection of Claims 1-30 be withdrawn.

Moreover, it is respectfully submitted that there is no basis in the teachings of either O’Riordain or Hansson to support the applied combination. Certainly, the outstanding Office Action does not cite to any teachings in either reference to provide the required motivation for the proposed combination. Accordingly, it is respectfully submitted that the combination of O’Riordain and Hansson is the result of hindsight reconstruction in view of the present specification, and is improper.

Newly added Claims 39-42 recite features previously disclosed in the specification at page 3, for example. Accordingly, it is respectfully submitted that no new matter is added by Claims 39-42. Additionally, Claims 39-42 depend from allowable Claims 1, 8, 17, and 24, respectively, and it is respectfully submitted that Claims 39-42 patentably distinguish over the applied references for at least the reasons above-noted with respect to Claims 1, 8, 17, and 24.

Consequently, in view of the foregoing discussion and present amendments, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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